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RUEHPE/AMEMBASSY LIMA PRIORITY 0090  
RUEHLO/AMEMBASSY LONDON PRIORITY 5274  
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RUEHSA/AMEMBASSY PRETORIA PRIORITY 0028  
RUEHCI/AMCONSUL KOLKATA PRIORITY 3401  
RUEHGV/USMISSION GENEVA PRIORITY 1620  
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SUBJECT: NEPAL: TRANSITIONAL JUSTICE MODEL IS UNDER DEBATE

Classified By: Ambassador James F. Moriarty. Reasons 1.4 (b/d)

Summary

1. (C) Retief Olivier, a USAID-contracted peace facilitator, told the Ambassador April 20 about a 10-person official delegation headed by Deputy Speaker Chitra Lekha Yadav that he was taking to the United Nations in New York as well as Peru April 22 - May 1 to look at transitional justice issues. Olivier, who is South African, explained that a debate was ongoing over whether a future Nepali Truth and Reconciliation Commission should emphasize reconciliation or justice. The Ambassador highlighted the challenges Nepal would face prosecuting human rights abusers.

Study Tour on Transitional Justice

2. (C) On April 20, Retief Olivier described to the Ambassador a study tour which he was taking to United Nations Headquarters in New York as well as Peru April 22 - May 1 to look at transitional justice and other peace process issues. Olivier is a South African peace facilitator with the Academy for Educational Development (AED), a USAID contractor. The trip was under USAID's Nepal Transition To Peace (NTTP) project. Olivier explained that, at the urging of the Secretary of the Peace Secretariat (now the Peace Ministry),

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he and Hannes Siebert, the senior South African peace facilitator with AED, had added several senior civil servants in addition to the politicians and civil society representatives who normally participated in NTTP. They had ended up, he said, with a 10-person official delegation, headed by Chitra Lekha Yadav, the Deputy Speaker of the Interim Parliament. The civil servants included a Secretary in the Prime Minister's Office and the Home Secretary. The group was scheduled to meet in New York April 22 - 26 with various UN offices and the International Center for Transitional Justice. In Peru, April 27 - May 1, they would meet primarily with the Peruvian Truth and Reconciliation Commission. (Note: The Swiss Government is paying for a senior Maoist leader, Suresh Ale Magar, to join the study

tour. Magar's application for a visa to travel to New York is under consideration by the Visa Office. Magar already has a Peruvian visa.)

#### Emphasis on Reconciliation or Justice?

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13. (C) Olivier noted that a debate was going on in Nepal and among organizations and donors on the appropriate model for transitional justice in Nepal. He said that one school of thought, and he conceded that he subscribed to this view based on his own experience, argued that the emphasis should be on reconciliation. The South African Truth and Reconciliation Commission had been given a large budget to investigate past crimes. It was, he stated, still wrapping up some of its work. However, to get at the truth, and because of the interest in reconciliation, the South African Commission had provided amnesty to the perpetrators of human rights abuses if they admitted to their crimes. Olivier said that another school of thought, and this included most of the European donors in Nepal, argued that justice not reconciliation was the paramount goal. The adherents of this school wanted the abusers punished.

#### Truth and Justice in the Nepali Context

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14. (C) The Ambassador remarked that Louise Arbour, the UN High Commissioner for Human Rights, appeared to belong to the second school. That was, at least, the impression she had given during her visit to Nepal in January 2007. The Ambassador said that his own preference would be to see all those who had committed crimes punished, whether they were Maoists or members of the security forces. The Nepal Office

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of the High Commissioner for Human Rights, meanwhile, seemed to focus almost exclusively on Government abuses. The Ambassador stressed that he had repeatedly urged the Nepal Army, for example, to investigate and punish the Army officers complicit in the abuses in the Bhairavnath Battalion in 2003; at the same time however, the Maoists also had to be held accountable for their misdeeds. A major problem, he said, was that the Government of Nepal (GON) and Nepal's courts inspired little confidence in their ability to investigate and prosecute human rights abusers. To the contrary, Nepal's governments had a history of producing investigative reports that only ended up collecting dust. Olivier agreed, noting that he doubted the GON would allocate sufficient funds to a Nepali Truth and Reconciliation Commission.

#### Relevant Provisions In the Peace Accord and Constitution

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15. (C) Note: On the face of it, the Comprehensive Peace Agreement that Prime Minister Girija Prasad Koirala signed with Maoist chief Prachanda on November 21, 2006 has already spelled out which model Nepal will follow. Section 5.1.5 provides that: "a High-level Truth and Reconciliation Commission (will be constituted) through ... mutual agreement in order to investigate (the) truth about those who have seriously violated human rights and those who were involved in crimes against humanity in (the) course of the war and to create an environment for reconciliations (sic) in the society." The Interim Constitution language is similar. Part 4, Duties, Directive Principles and Policies of the State, Section 23, lists as a duty: "Constitute (a) high-level fact-finding and reconciliation commission to investigate the facts regarding serious violation (sic) of human rights and crimes against humanity during the course of the conflict, and create an atmosphere of reconciliation in the society." The emphasis is clearly on reconciliation. End note.

Comment

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¶16. (C) Peace facilitators Olivier and Siebert have indicated to post that the Government of Nepal (GON) is not likely to stand up a Truth and Reconciliation Commission until after the Constituent Assembly election, but that terms of reference for that Commission are already under consideration. A source at the National Human Rights Commission told Emboff April 19 that senior Maoist leader Dinanath Sharma had told him a few weeks earlier that the Maoists should never be held accountable for past abuses because "they had not lost the People's War." Only losers, Sharma claimed, needed to answer for past crimes. The Nepal Army (NA) has not been so categorical about claiming impunity for past offenses, but there is a strong institutional reluctance from the top down to come to terms with its history. Both of these factors point toward reconciliation as the model for Nepal. The Office of the High Commissioner for Human Rights and some other members of the international community seem at times to be pushing for a double standard: justice for abuses by the security forces and the erstwhile Nepali Government and reconciliation for Maoist abuses. This may be a reflection that it is easier to investigate the NA and the former Government; people are still afraid to bring charges against the Maoists. But if justice is to be done, it must be even-handed.

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